

APPEAL NO. 022318
FILED OCTOBER 15, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 13, 2002. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury; that the claimed date of injury is _____; that the claimant had not timely reported his claimed injury to the employer and did not have good cause for failing to do so; and that because there was no compensable injury, there can be no disability.

The claimant appeals, asserting that the medical records show that he had an injury and that he reported the injury to his supervisor the same date that it occurred. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant, a dump truck driver, testified that he injured his back on _____, attempting to open or close the hood of his truck. In dispute is whether the claimant reported a work-related injury to his supervisor that day or merely said that his back was hurting. The claimant continued to work until May 16, 2002, when he was reprimanded for not cleaning his truck. In dispute is whether the claimant resigned that day because of his back pain or because he thought that he had a better job elsewhere. (The claimant subsequently failed a preemployment physical for the other employer because of a degenerative back condition.) A nurse practitioner's note of April 12, 2002, merely says that the claimant "sustained a back injury at work" without any specifics.

The hearing officer commented that she did not find the claimant's testimony credible and that the medical reports were not credible because they were based on a faulty history given by the claimant. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgement for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust and we do not find it to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT RAMSOWER
EMPLOYERS GENERAL INSURANCE COMPANY
1601 ELM STREET, SUITE 1600
DALLAS TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Margaret L. Turner
Appeals Judge